

The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOHN HATHAWAY and DALE TAYLOR

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Appeal 2007-2873  
Application 09/800,793  
Technology Center 3700

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Decided:

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Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and  
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal from a rejection of claims 3-14. Claims 1 and 2 have been canceled.

THE INVENTION

The Appellants claim a plastic closure having both 1) parting line flash or surface mismatch, and 2) at least one annular sealing band for engaging a gasket. Claim 9 is illustrative:

9. A plastic closure capable of preventing leakage between a closure sealing surface having part line flash or surface mismatch thereon and a gasket, said plastic closure comprising:

a cap portion;

an annular sealing surface extending below said cap portion and having part line flash or surface mismatch thereon; and

at least one annular sealing band extending radially outwardly from said annular sealing surface and through at least a portion of said part line flash or surface mismatch, so that said at least one sealing band engages the gasket so as to prevent leakage between said part line flash or surface mismatch and said gasket.

#### THE REFERENCE

Williams

US 1,842,226

Jan. 19, 1932

#### THE REJECTION

Claims 3-14 stand rejected under 35 U.S.C. § 103 as being unpatentable over the Appellants' admitted prior art in view of Williams.<sup>1</sup>

#### OPINION

We affirm the aforementioned rejection.

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<sup>1</sup> The Examiner also relies upon US 5,320,236 to Gregory (Ans. 5). Because that reference is not included in the statement of the rejection it is not properly before us. *See In re Hoch*, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970). Accordingly, we do not further address Gregory.

The Appellants acknowledge that the claimed plastic closure was known in the art except for the recited parting line flash or surface mismatch in combination with at least one annular sealing band (Spec. 1-2). The Appellants state:

The generally accepted manufacturing method of producing plastic closures for use in this particular application requires the use of a split-block mold, which offers the opportunity for “parting line flash,” otherwise referred to as parting line mismatch, to be created on the closure’s radial sealing surface. The sharp edged surface created by the flash or mismatch is not an ideal sealing surface, and provides a potential leak path through the gland. [Spec. 1]

\* \* \*

In an effort to improve the closure performance, closure manufacturers often perform a secondary operation on the closure when parting line flash or mismatch is present on the sealing surface. Secondary operations include machining the entire outer circumference of the closure sealing gland, or else removing the flash or mismatch through a secondary machining process. In either case, the secondary operations add cost to the product, and lower potential profits to the manufacturer. [Spec. 2]

The Appellants eliminate the step of removing the parting line flash or mismatch and compensate for the potential leakage resulting from the presence of the parting line flash or mismatch by including around the top neck section one or more annular bands that bite into the gasket and thereby improve the seal (Spec. 2).

Williams discloses a jar (5) and a closure (7) which preferably are made of glass but can be made of any other suitable material (p. 1, ll. 83-88; p. 2, ll. 5-8). The closure has, below an upper peripheral flange (9), a

rounded bead (12) that extends around the closure and protrudes from the adjacent surface (13) (p. 2, ll. 13-18, 25-30; fig. 4). The bead squeezes into a gasket (11) and presses the gasket against the internal surface of the mouth of the jar, thereby insuring an effective seal (p. 1, ll. 47-52; p. 2, ll. 40-44, 84-90). Williams teaches that in the prior art the seal is not certain due to slight irregularities in the relative dimensions of the jar and its closure member (p. 1, ll. 30-36).

The Appellants argue that Williams is limited to glass jars (Br. 10; Reply Br. 3-4). The Appellants are incorrect. Williams teaches that the jar and the closure can be made of other suitable materials (p. 1, ll. 85-88; p. 2, ll. 5-8).

The Appellants argue that the prior art removal of the parting line flash or mismatch teaches away from providing a closure having parting line flash or mismatch, and that Williams does not disclose a threaded closure or molded plastic construction<sup>2</sup> and is silent regarding parting line flash or mismatch (Br. 8; Reply Br. 3-4). That argument is deficient in that the Appellants are attacking the prior art individually when the rejection is based on a combination of prior art. *See In re Keller*, 642 F.2d 413, 426, 208 USPQ 871, 882 (CCPA 1981); *In re Young*, 403 F.2d 754, 757-58, 159 USPQ 725, 728 (CCPA 1968).

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<sup>2</sup> The Appellants' claims do not expressly require molded construction, and independent claims 9 and 12 do not require threaded engagement.

The Appellants argue that Williams is concerned only with sealing between the gasket and the jar, not between the gasket and the closure (Reply Br. 5). It would have been apparent to one of ordinary skill in the art that the pressing of Williams' gasket by the annular bead (fig. 4) would improve the seal on both sides of the gasket.

The Appellants argue that the combined applied prior art would teach a conventional closure that has an annular sealing band but no parting line flash or mismatch (Br. 10; Reply Br. 4-5). The Appellants acknowledge that the machining for removing the parting line flash or mismatch was known to add cost to the product and to reduce the manufacturer's profits (Spec. 2). Thus, one of ordinary skill in the art would have been led by market forces to eliminate that machining along with its cost. *See KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1397 (2007) ("When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp."). Williams would have indicated to one of ordinary skill in the art that the pressing of the annular bead into the gasket insures an effective seal even though there are slight irregularities in the relative dimensions of the jar and the closure (p. 1, ll. 33-36, 47-52; p. 2, ll. 40-44; 84-87). Williams does not disclose that the slight irregularities referred to include parting line flash or mismatch. However, one of ordinary skill in the art at the time of the Appellants' invention would have appreciated that parting line flash or mismatch is a slight irregularity in the relative

dimensions of the container and jar at that point. The person of ordinary skill in the art, therefore, would have had a reasonable expectation that the pressing of Williams' annular bead into the gasket of the admitted prior art closure in the vicinity of the parting line flash or mismatch would overcome the potential for leakage caused by the parting line flash or mismatch.

Consequently, the use of Williams' annular bead in the admitted prior art closure would have been prima facie obvious to one of ordinary skill in the art. *See In re O'Farrell*, 853 F.2d 894, 904, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988) ("For obviousness under § 103, all that is required is a reasonable expectation of success.").

For the above reasons we are not convinced of reversible error in the Examiner's rejection.

#### DECISION

The rejection of claims 3-14 under 35 U.S.C. § 103 over the Appellants' admitted prior art in view of Williams is affirmed.

#### AFFIRMED

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